

3d June, 1828.—BLAND, *Chancellor*.—The petition of *Warner Welch* and *Rachel* his wife having been submitted without argument, the proceedings were read and considered.

The object of the bill is to have the land sold for the payment of the purchase money due to the plaintiff; his claim therefore carries with it an equitable lien upon the land sold, which entitles him to a preference in satisfaction from the proceeds of the sale over all others; and consequently, the petitioner *Rachel*, according to the act of assembly, (a) can only be endowed of the equitable interest of her late husband, without prejudice to the plaintiff's claim; that is, of the surplus which may remain after that claim has been satisfied. But as it does not appear what is the amount of the surplus, if any;

It is therefore *Ordered*, that this case be and the same is hereby referred to the auditor with directions to state an account accordingly, allowing to the said *Rachel* out of such surplus, if any, two-thirteenths for and in lieu of her dower in the equitable interest held by her late husband in the lands in the proceedings mentioned.

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After which, on the 29th of June, 1829, the auditor reported a statement distributing the proceeds, first in payment of the costs, commissions and expenses, next in satisfaction of the plaintiff's claim in full; and then the balance or surplus among the widow and heirs of the deceased. But the auditor suggested, that no notice appeared to have been given to the creditors of the deceased to exhibit their claims against the estate, as there should have been before any part of the balance was paid over to the heirs.

6th July, 1829.—BLAND, *Chancellor*.—This case having been submitted on the auditor's report without argument, the proceedings were read and considered.

The plaintiff founds his claim to relief on an equitable, or vendor's lien upon the real estate designated in the proceedings. He is here, in effect, as a mortgagee seeking relief against a mortgagor; but as a mortgagee, or the holder of an equitable lien has no common interest with the general creditors of the debtor, he cannot in his and on their behalf institute a creditors' suit. (b) Although this bill alleges, 'that the personal estate of the intestate will be greatly insufficient to pay his debts;' yet the plaintiff does

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(a) 1818, ch. 193, s. 10.—(b) *Burney v. Morgan*, 1 Cond. Chan. Rep. 182.